

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 556-E

Case No. 87-19C

(PUD @ 1001 New York Avenue, N.W.)

May 11, 1998

By Zoning Commission Order No. 556, dated January 11, 1988, the Zoning Commission for the District of Columbia granted approval of an application from the Hadid Development Corporation for a consolidated review of a planned unit development (PUD) for Lots 8, 7, 811, 812, and 826 through 828 in Square 343 located at 1001 New York Avenue, N.W., pursuant to the provisions of Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The PUD approval was for the construction of a 12-story retail/office building on various lots in Square 343, subject to certain guidelines, conditions, and standards. The PUD project would have a total gross floor area of 237,848 square feet, a maximum floor area ratio (FAR) of 9.3, a maximum height of 130 feet and a maximum lot occupancy of 91.7 percent. The project would provide on-site parking to accommodate 163 cars.

Order No. 556 became final and effective on February 26, 1988. The validity of that order was for two years; that is, until February 26, 1990, provided that application for a building permit was filed within that period of time, after which construction would have to start by February 26, 1991.

By Order No. 556-A dated September 11, 1989, the Zoning Commission granted a modification to the PUD to permit design changes to the facade of the building. Order No. 556-A became final and effective on October 6, 1989. The validity of Order No. 556-A was for two years; that is, until October 6, 1991 for the filing of an application for a building permit, after which construction would have to start within three years, by October 6, 1992.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval. The Zoning Commission has extended the validity of the PUD approval three times:

- Order No. 556-B dated August 5, 1991, extended the validity of the PUD for two years until October 6, 1993, by which time an application for a building permit was required to be filed and until October 6, 1994, by which time construction was to begin.
- Order No. 556-C dated January 10, 1994, extended the validity of the PUD for an additional two years until October 6, 1995, by which time an application for a building permit was required to be filed and until October 6, 1996, by which time construction was to begin.
- Order No. 556-D, dated February 12, 1996, extended the validity of the PUD for an additional two years until October 6, 1997, by which time an application for a building permit was required to be filed and until October 6, 1998, by which time construction was to begin.

By letter dated September 30, 1997, the Federal Deposit Insurance Corporation (FDIC), current owner of the PUD site, filed a request to extend the validity of the previously approved PUD for an additional period of two-years. On November 18, 1997, the FDIC paid the appropriate fee and filed supplemental information. On March 30, 1998, counsel for the FDIC responded to certain issues raised by the Zoning Commission and also provided specific information in support of the request for extension.

The FDIC acquired the property in 1993 in its capacity as receiver of the National Bank of Washington. Marketing of the property was originally handled by the FDIC regional office in Atlanta, Georgia. That office was closed in July, 1997, and the property was transferred to the portfolio of the Southwest Field Office in Dallas, Texas.

Subsequent to the last PUD extension, granted in March, 1996, the property was listed for sale with a local broker. The FDIC received a number of offers to purchase the property, but all were rejected because they were either far below the appraised value of the property of approximately \$6,000,000 or contained terms and conditions which could not be accepted by the FDIC. The FDIC held an auction in November, 1997, but the highest bid received was \$1,600,000, well below the minimum reserve price, which itself was well below the appraised value.

The FDIC's disposition of the site has been delayed partially by the reorganization and consolidation of the FDIC field offices, which closed the Atlanta office and reassigned control of this asset to the Dallas office in July, 1997, only three months before the present PUD expired. The FDIC is not in the real estate development business and is seeking to dispose of the property. Due to the lack of demand for office space and real estate market conditions, the FDIC has not been successful in selling the property. The FDIC continues to actively seek buyers for the property who will be able to move forward with development. The FDIC is in the process of hiring a new broker and expects to conduct a sealed bid sale of the property in June, 1998.

The FDIC argued that it is in the best interests of the District and the Federal government to continue the PUD approval for an additional two year period. The FDIC's fiduciary responsibility is to dispose of assets acquired from failed financial institutions, consistent with public policy to minimize the losses incurred in liquidating the assets of those institutions, in this case, the National Bank of Washington. The District's interests would be best served by encouraging development of the site, replacing the existing parking lot. The FDIC argues that extending the PUD will leave the FDIC in the best position to market the site and find a purchaser, without having to commence a new process if the current development scenario is replaced with new constraints.

The FDIC noted that the facts and circumstances surrounding the request for extension have not changed since the request for the first extension. The FDIC seeks no change in any of the conditions of approval of the project, including the development parameters applicable to the office building or the benefits and amenities which will be provided as a result of the project.

By memorandum dated November 25, 1997, the District of Columbia Office of Zoning (OZ) referred this matter to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case. By memorandum dated December 24, 1997, the OP reported that:

“At the time of the approval of the PUD and map change, the site was designated for high-density commercial and residential land use on the Generalized Land Use Map of the Comprehensive Plan. This designation has not changed.

The OP further noted that “The zoning for the site has not changed since the project was originally approved.”

Advisory Neighborhood Commission 2F, within which the subject property is now located, submitted a report, dated December 26, 1997, to the Commission. The ANC noted that, after the 1990 Census, the boundaries of ANCs were redrawn, and a new ANC, 2F, was created. The ANC opposed the two-year extension because the amenities enumerated in the Commission's Order were negotiated with ANC 2C, within which the property was located at the time of the original approval, and the amenities enumerated in the order “offer no benefits to the residents within the boundaries of ANC 2F.” The ANC noted that it was ready to negotiate with the FDIC on mutually agreeable amenities.

On April 13, 1998, at its regular monthly meeting, the Zoning Commission considered the request of FDIC, the OP report and the report of ANC 2F. The Zoning Commission concurs with the OP and the applicant. The applicant has demonstrated, by substantial evidence, “good cause” as required by §2408.11. The FDIC has demonstrated its diligence in attempting to dispose of the property for development. The conditions of the market, beyond the control of the applicant, have prevented the applicant from moving forward.

With respect to the issue of the change in ANC boundaries, the Commission notes that the same issue was raised by the Blagden Alley Association in connection with the request for extension filed in 1993. In ruling to grant that request, in Order No. 556-C, the Commission stated as follows:

The Zoning Commission notes that a memorandum of understanding has been ratified between the applicant and the former ANC-2C, as required by Z.C. Order No. 556. The Commission also notes that the applicant must satisfy the requirements of Z.C. Order No. 556 to produce off-site housing units within the boundaries of the former ANC-2C.

The Commission requested OZ to solicit advice from the Office of Corporation Counsel (OCC) about performance requirements between applicants and an ANC that experiences a change of its boundaries, and the question of which ANC has standing in this scenario.

The Commission notes that the boundaries of the former ANC-2C now include the boundaries of the existing ANCs-2F and 2C, and a portion of the existing ANC 6A.

The Commission is persuaded by the advice of OCC and hereby advises the applicant to revise its memorandum of understanding with the former ANC-2C to include the existing ANC-2F and the representatives of that portion of the existing ANC-6A which previously was located within the boundaries of the former ANC-2C.

The Commission finds that the prior decision is proper and controlling with respect to this issue and adopts the same view in this order.

The Commission finds that the applicant has met its burden under the criteria of §2408.11 as a demonstration of good cause. There is no need for a public hearing since no material factual conflict exists with respect to the criteria of §2408.11. The Commission also finds that an extension of time of the validity of this PUD is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

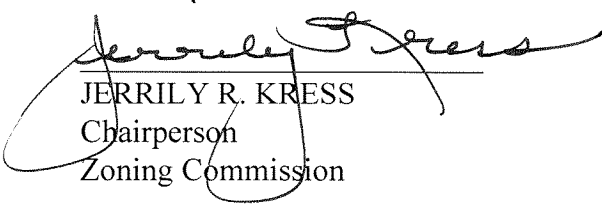
In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby ORDERS that the validity of Z.C. Order Nos. 556, 556-A and 556-B, 556-C and 556-D be EXTENDED for a period of two years until October 6, 1999. Prior to the expiration of that time, the applicant shall file for a building permit, as specified in 11 DCMR 2406.8, and construction shall start not later than October 6, 2000.

Vote of the Zoning Commission taken at the public meeting on April 13, 1998: 3-0 (Jerrily R. Kress, Maybelle Taylor Bennett and John G. Parsons to approve a two-year PUD extension, Herbert M. Franklin, not voting, not present.)


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This order was adopted by the Zoning Commission at its public meeting on May 11, 1998 by a vote of 3-0 (John G. Parsons, Jerrily R. Kress and Herbert M. Franklin, to adopt – Anthony J. Hood and Angel F. Clarens abstained).

In accordance with the provisions of 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register; that is, on JUN 26 1998.



JERRILY R. KRESS
Chairperson
Zoning Commission



SHERI M. PRUITT-WILLIAMS
Interim Director
Office of Zoning

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